

INTERNAL REVENUE SERVICE

Number: **200403082**
Release Date: 1/16/2004
Index Nos.: 9100.09-00

CC:ITA:Br05//PLR-134100-03

October 7, 2003

EIN:
Attn:

Dear Taxpayer:

This is in reference to a Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, submitted on behalf of the above-named taxpayer, requesting permission to adopt, for federal income tax purposes, a taxable year ending October 31, effective for the taxpayer's taxable year beginning February 12, 2002, and ending October 31, 2002. The taxpayer has requested that the Form 1128 be considered timely filed under authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

The taxpayer's Form 1128 requesting to adopt an annual accounting period ending October 31, 2002, was due on or before February 17, 2003, but was not timely filed; however, the form was filed within 90 days of the due date. Information furnished indicates that the late filing was due to an error or misunderstanding, and not to any lack of due diligence or prompt action on the part of the taxpayer.

Section 1.442-1(b) of the Income Tax Regulations provides that in order to secure the Commissioner's consent to adopt, change, or retain an annual accounting period, the taxpayer must file an application on Form 1128 with the Commissioner within such time and in such manner as is provided in administrative procedures published by the Commissioner. Section 1.441-1(c)(2)(i) of the regulations provides that a newly-formed partnership that wants to adopt a taxable year other than its required taxable year . . . must establish a business purpose and obtain the approval of the Commissioner under section 442 of the Code. The applicable administrative procedure in the instant case is Rev. Proc. 2002-39, 2002- 22 I.R.B. 1046.

Section 301.9100-3(a) of the regulations provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extensions), such as the instant case, must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will

be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Based on the facts and information submitted and the representations made, it is held that the taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for the granting of relief have been satisfied in this case, and taxpayer's late-filed Form 1128 requesting permission to adopt a tax year ending October 31, effective for the tax year ending October 31, 2002, is considered timely filed.

Since the separate "user fee" required to process the taxpayer's Form 1128 has been paid, we will begin processing the taxpayer's application immediately.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer, and is limited to the filing of Form 1128. Except as specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto. This office has not verified any of the material submitted in support of the requested ruling; verification of factual information, representations, and other data is within the examination jurisdiction of the taxpayer's IRS Industry Director. Specifically, no opinion is expressed as to whether the taxpayer is permitted under the Code and applicable regulations to adopt the tax year requested in the subject Form 1128.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely yours,

WILLIAM A. JACKSON
Chief, Branch 5
Associate Chief Counsel
(Income Tax and Accounting)

Enclosures:

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